

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 62156**

Petitioner:

**HAL MARSHALL SEARS REVOCABLE TRUST,**

v.

Respondent:

**MESA COUNTY BOARD OF EQUALIZATION.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on January 17, 2014, Louesa Maricle and MaryKay Kelley presiding. Hal Marshall Sears, trustee, appeared pro se on behalf of Petitioner. Respondent was represented by David Frankel, Esq. Petitioner is protesting the 2013 actual value of the subject property.

Subject property is described as follows:

**687 Horizon Drive, Grand Junction, Colorado  
Mesa County Schedule No. 2945-012-50-013**

The subject property is a free-standing structure built in 2008 on a 1.22 acre site. It consists of a three-bay Grease Monkey (2,196 square feet) and the Sang Garden Restaurant (3,144 square feet). The property is adjacent to a retail center that is anchored by Safeway and includes a car wash and strip mall.

Respondent assigned a value of \$904,260 but is recommending a reduction to \$880,000. Petitioner is requesting an actual value of \$645,000.

Petitioner presented the following indicator of value:

Market:	\$600,000
Cost:	N/A
Income:	N/A

Mr. Sears discussed the declining economy and real estate market; the 2008 financial crisis resulted in the largest recession since the Great Depression, the oil and gas industry exited the area, sales declined, and his business lost \$44,000 during the base period and will eventually close. The Chinese restaurant holds a short-term lease that may not be renewed, and retrofitting either business for potential purchasers would require an improvement allowance, leasing commissions, and considerable risk.

Petitioner presented a market approach prepared by an independent tax agent. It included six comparable sales ranging in sale price from \$350,000 to \$825,000; one of the six was dismissed due to its post-base period sale date. All were Grease Monkeys, Jiffy Lube or Big O's located elsewhere in the state. Indicated values were presented for each of the sales. Mr. Sears concluded to a value of \$645,000.

Mr. Sears, discussing Respondent's income approach, argued that the 9% capitalization rate was too low. The rate was investor based and did not address the two-tenant building, economic conditions, or the cost of retrofitting.

Respondent presented the following indicators of value:

Market:	N/A
Cost:	\$760,000
Income:	\$935,000

Respondent's witness, Reed Orr, Certified General Appraiser, presented a cost approach with four vacant site comparables to derive a site value of \$212,572, which included the impact of an arroyo-based floodway. He used Marshall Valuation Service replacement costs to derive values for the Grease Monkey and restaurant. He applied physical depreciation and site improvements to derive a value of \$760,000. Mr. Orr assigned a weighted average of 30% to this approach.

Mr. Orr used the income approach to derive a value of \$935,000. He concluded to a rental rate of \$16 per square foot based on actual rents (\$17.36 for 2011 and \$18.39 for 2012), published survey averages from Grand Junction (\$21.50 per square foot) and the Denver Metropolitan Area (\$21.33 per square foot), and confidential data submitted to the assessor's office (\$20.00 for quick lube and automobile services and from \$9.26 to \$39.28 per square foot for restaurants). His conclusion of \$16 was based on the subject's superior location as well as the risk of a higher vacancy and collection loss. He estimated a vacancy rate of 6% based on multiple restaurant and retail surveys. Replacement reserves were estimated at 5% based on a strip center survey. The capitalization rate was determined to be 9%, slightly higher than the low end of the Burbach and Associates Real Estate Investment Survey range (summer of 2012) from 8.5% to 13% due to the higher-than-market-rent for the restaurant, the unusual physical configuration, and the volatility of an owner-occupied property. Mr. Orr assigned a weighted average of 70% to this approach.

Respondent presented sufficient probative evidence and testimony to prove that the 2013 value of the subject should be reduced to \$880,000.

Colorado case law requires that “[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . .” *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2013.

Petitioner presented little data to support his arguments. The market approach, while including five comparable sales within the base period, included no adjustments, was completed by a tax agent not available for questioning, and is given little weight. While arguing that Respondent’s capitalization rate was too low due to the high risk of the dual-use building, the short-term restaurant lease, vacancies in nearby buildings, and economic issues throughout the base period, no substantive data supporting a higher rate was offered. The Board notes that the analysis contained in Respondent’s appraisal was based on surveys and confidential data without independent research. While not persuaded that Respondent’s income approach was adequately supported, the Board is unable to rely on the data provided by Petitioner.

**ORDER:**

The petition is granted. Mesa County Assessor is ordered to reduce the 2013 value of the subject to Respondent’s recommended value of \$880,000.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

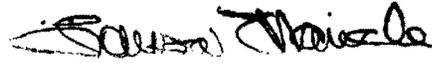
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

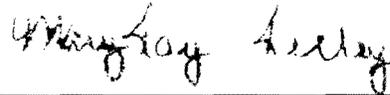
Section 39-8-108(2), C.R.S.

DATED and MAILED this 30th day of January, 2014.

**BOARD OF ASSESSMENT APPEALS**

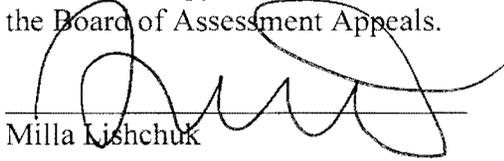


Louesa Maricle



MaryKay Kelley

I hereby certify that this is a true  
and correct copy of the decision of  
the Board of Assessment Appeals.

  
Milla Kishchuk